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Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council

Conference room paper submitted by the Bureau of the Open-ended Working Group, entitled "Decision-making in the Security Council; the veto as a voting instrument in the Security Council"

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Introduction

In the programme of work adopted by the Open-ended Working Group on 5 February 2001, "Decision-making in the Security Council, including the veto" is the first item to be discussed under cluster I issues. The issue of the veto as a voting instrument is one of the questions the Working Group needs to address in order to facilitate the process of reaching general agreement.

To facilitate discussion in the Working Group, the Bureau intends to submit conference room papers on issues to be discussed under clusters I and II. The present document is the first of these papers. In order to build on the work done during previous sessions, it is based on annex XI, section A (a), of document A/54/47. This paper does not, for the time being, deal with proposals requiring Charter amendment as presented in section (b) of the above-mentioned annex XI. This does not in any way preclude their being discussed at a later stage.

The Bureau suggests that the discussion focus on the principal elements in the suggestions, as laid out in section III of the paper.

I. Suggestions, with reference to the veto, in annex XI to the report of the Open-ended Working Group of 25 July 2000 (A/54/47), that would not require amendment of the Charter

(1) The veto as a voting instrument should be maintained as today. [Oral proposal at the May 2000 session of the Open-ended Working Group]

(2) The veto as a voting instrument should be maintained without amendment to the Charter of the United Nations. [Written proposal submitted to the Bureau during the May 2000 session of the Working Group]

(3) Any attempt to restrict or curtail the veto rights of the permanent members would not be conducive to the reform process. [Oral proposal at the May 2000 session of the Working Group, referring to document S/1999/996]

(4) The proposals regarding limitations of the rights of the veto, found in the 1948 documents submitted to the Interim Committee by representatives of China (A/AC.18/13), the United Kingdom of Great Britain and Northern Ireland (A/AC.18/17) and the United States of America (A/AC.18/41), should be considered. [Oral proposal at the May 2000 session of the Working Group]

(5) New permanent members should commit themselves not to use the veto de facto, even if they have it de jure. [Oral proposal at the May 2000 session of the Working Group]

(6) The introduction of an obligation for a State to explain to the General Assembly why it is vetoing a resolution would make it more difficult to do so and thus bring about substantial progress towards using the right of veto more responsibly. [A/AC.247/2000/CRP.4]

(7) The Security Council or the General Assembly should update the annex to Assembly resolution 267 (III), containing a list of decisions deemed procedural. [A/52/47, annex III, sect. VI.A, para. 26 (b) (i)]

(8) The Security Council or the General Assembly should provide a legal definition of what constitutes a procedural matter or clear criteria as to what is of a procedural nature (Article 27, para. 2, of the Charter). [A/52/47, annex III, sect. VI.A, para. 26 (b) (ii)]

(9) The Security Council should further explore the proposal for a provision enabling a permanent member to cast a negative vote without that vote constituting a veto if the member so declares. [A/52/47, annex III, sect. VI.A, para. 26 (c) (i)]

(10) The Security Council should explore further the possibility for unilateral declarations by the permanent members containing a commitment not to resort to the veto. [A/52/47, annex III, sect. VI.A, para. 26 (c) (ii)]

(11) The permanent members of the Security Council, collectively or individually, should commit themselves, in a legally binding manner, not to resort to the veto or to the threat of its use beyond actions taken under Chapter VII of the Charter [A52/47, annex X, sect. I.A, para. 1]

(12) The permanent members of the Security Council should exercise the veto in a manner consistent

with their responsibilities under the Charter. The permanent members should always provide a written justification whenever they exercise the veto. [A/52/47, annex X, sect. I.A, para. 2]

(13) A legal definition of what constitutes a procedural matter in the decision-making of the Security Council should be formulated. A list of decisions of the Security Council deemed procedural should be developed, inter alia, through the revision of the annex to General Assembly resolution 267 (III). [A/52/47, annex X, sect. I.A, para. 4]

(14) The General Assembly should adopt a declaration expressing its attitude towards the veto as a voting instrument in the Security Council, encouraging Security Council members to make every effort to seek consensus in the Council's decision-making process. The declaration should also contain recommendations to the Council aimed at curtailing, limiting or discouraging the use of the veto [A/52/47, annex X, sect. I.A, para. 5]

(15) The permanent members of the Security Council, collectively or individually, should commit themselves, in a legally binding manner, not to resort to the veto or to the threat of its use beyond actions taken under Chapter VII of the Charter. Such commitments should be incorporated into the rules of procedure of the Security Council. [A/52/47, annex XI, sect. I.A, para. 1]

(16) The permanent members of the Security Council should exercise the veto in a manner consistent with their responsibilities under the Charter and in accordance with the norms of international law. The veto should be exercised only when permanent members consider the question of vital importance, taking into account the interests of the United Nations as a whole. To state upon what factual and legal ground the permanent members consider this condition to be present, they should always provide a written justification, which could be considered legally binding. [A/52/47, annex XI, sect. I.A, para. 2]

(17) The Security Council should introduce a practice whereby a permanent member would be able to cast a negative vote without such a vote constituting a veto when the member so declares. This would be similar to the current practice concerning the abstention, non-participation or absence of a permanent member in the Council's decision-making process. [A/52/47, annex XI, sect. I.A, para. 3]

(18) A legal definition of what constitutes a procedural matter in decision-making of the Security Council should be formulated. In lack thereof, clear criteria as to which matters are of a procedural nature should be developed. Decisions referred to as being of a procedural nature could be based on the following criteria:

(a) All decisions adopted in application of provisions that appear in the Charter under the heading "procedure";

(b) All decisions concerning the relationship between the Security Council and other organs of the United Nations, or by which the Security Council seeks the assistance of other organs of the United Nations;

(c) All decisions related to the Security Council's internal functioning and the conduct of its business;

(d) All decisions that bear a close analogy to decisions included under the above-mentioned criteria;

(e) Certain decisions instrumental in arriving at or in following up a procedural decision. [A/52/47, annex XI, sect. I.A, para. 4].

(19) The permanent members shall generally be guided by the annex to General Assembly resolution 267 (III) of 14 April 1949 regarding which matters should be deemed procedural. [A/52/47, annex XI, sect. I.A, para. 5]

(20) The following decisions have been suggested to be deemed procedural, in addition to those contained in the annex to resolution 267 (III).

(a) All decisions taken by the Security Council under Chapter VI of the Charter, including:

(i) Decisions to call upon the parties to a conflict to resort to peaceful means of conflict resolution;

(ii) Decisions on mediation efforts and measures of preventive diplomacy;

(iii) Decisions calling for gathering of information or for the dispatch of observers to ascertain facts;

(b) Decisions to call upon the parties to a conflict to abide by the rules of international humanitarian law;

(c) Decisions on procedural matters related to consultations with troop-contributing countries;

(d) Decisions on the timing and modalities of submitting the report of the Security Council to the General Assembly;

(e) Recommendations of the Security Council made in accordance with Articles 4, 5, 6 and 97 of the Charter;

(f) Decisions taken under Article 40 of the Charter relating to provisional measures;

(g) Decisions adopted on the basis of implementing Article 50 of the Charter. [A/52/47, annex XI, sect. I.A, para. 6]

(21) General Assembly resolution 267 (III), with its updated annex and any agreed additional decisions deemed procedural, should be recommended to the Security Council for adoption and incorporation into its rules of procedure. [A/52/47, annex XI, sect. I.A, para. 7]

(22) The members of the Security Council shall make every effort to seek consensus in the Council's decision-making process. [A/52/47, annex XIV]

(23) The permanent members of the Security Council shall make statements, either individually or collectively, that the veto will be exercised in a manner consistent with their responsibilities under the Charter. [A/52/47, annex XIV, para. 2]

(24) In the event of any veto of a draft resolution of the Security Council, the permanent members should accompany that decision with an explanation of such action. [A/52/47, annex XIV, para. 4]

(25) A high-level working group should consider the question of the veto and submit any agreed recommendations to the General Assembly as soon as it is able, if possible prior to the adoption of Charter amendments. [A/52/47, annex XIV, para. 5]

(26) The permanent members of the Security Council should endeavour not to resort to the veto or to the threat of its use. They should exercise the veto in a manner consistent with their responsibilities under the Charter. The General Assembly should adopt a declaration encouraging Security Council members to make every effort to seek consensus in the Council's decision-making process. [A/52/47, annex XV]

(27) The General Assembly, in accordance with Article 10 of the Charter, would make specific recommendations aimed at reducing areas where the veto can be applied. [A/52/47, annex XVI, para. 3 (a)]

(28) The existing permanent members would state, individually or collectively, in writing, that they would commit themselves to exclude the use of the veto as recommended by the General Assembly. [A/52/47, annex XVI, para. 3 (b)]

(29) The permanent members of the Security Council, mindful of the fact that they are acting on behalf of the United Nations as a whole, should exercise the veto only when they consider the question to be of vital importance, taking into account the interest of the United Nations as a whole, and should state in each case, in writing, on what ground they consider that condition to be present. [A/52/47, annex XVI, para. 4 (a)]

(30) The veto should be excluded in respect of matters contained in the annex to General Assembly resolution 267 (III), entitled "Decisions deemed procedural", updated as necessary. [A/52/47, annex XVI, para. 4 (b)]

(31) To discourage the use of the veto, the General Assembly should decide to urge the original permanent members of the Security Council to limit the exercise of their veto power to actions taken under Chapter VII of the Charter. [A/52/47, annex II, para. 4 (a)]

II. Grouping of suggestions according to their similarities

A. Suggestions intended to leave the veto in its present form

Such suggestions are contained in the following paragraphs of Annex XI (A (a)):

(1) The veto as a voting instrument should be maintained as today. [Oral proposal at the May 2000 session of the Open-ended Working Group]

(2) The veto as a voting instrument should be maintained without amendment to the Charter of the United Nations. [Written proposal submitted to the Bureau during the May 2000 session of the Working Group]

(3) Any attempt to restrict or curtail the veto rights of the permanent members would not be conducive to the reform process. [Oral proposal at the May 2000 session of the Working Group, referring to document S/1999/996]

B. Suggestions intended to preclude or limit exercise of the veto

Suggestions relating to the scope of the veto

(A) What constitutes "procedural" matters, in terms of Article 27, paragraph (2), of the Charter, should be established by an updating of the annex to General Assembly resolution 267 (III) *and* should be applied by the Security Council.

Such suggestions are contained in the following paragraphs of annex XI (A (a)):

(7) The Security Council or the General Assembly should update the annex to Assembly resolution 267 (III), containing a list of decisions deemed procedural. [A/52/47, annex III, sect. VI.A, para. 26 (b) (i)]

(8) The Security Council or the General Assembly should provide a legal definition of what constitutes a procedural matter or clear criteria as to what is of a procedural nature (Article 27, para. 2, of the Charter). [A/52/47, annex III, sect. VI.A, para. 26 (b) (ii)]

(13) A legal definition of what constitutes a procedural matter in the decision-making of the Security Council should be formulated. A list of decisions of the Security Council deemed procedural should be developed, inter alia, through the revision of the annex to General Assembly resolution 267 (III). [A/52/47, annex X, sect. I.A, para. 4]

(18) A legal definition of what constitutes a procedural matter in decision-making of the Security Council should be formulated. In lack thereof, clear criteria as to which matters are of a procedural nature should be developed. Decisions referred to as being of a procedural nature could be based on the following criteria:

(a) All decisions adopted in application of provisions that appear in the Charter under the heading "procedure";

(b) All decisions concerning the relationship between the Security Council and other organs of the United Nations, or by which the Security Council seeks the assistance of other organs of the United Nations;

(c) All decisions related to the Security Council's internal functioning and the conduct of its business;

(d) All decisions that bear a close analogy to decisions included under the above-mentioned criteria;

(e) Certain decisions instrumental in arriving at or in following up a procedural decision. [A/52/47, annex XI, sect. I.A, para. 4]

(19) The permanent members shall generally be guided by the annex to General Assembly resolution 267 (III) of 14 April 1949 regarding which matters should be deemed procedural. [A/52/47, annex XI, sect. I.A, para. 5]

(20) The following decisions have been suggested to be deemed procedural, in addition to those contained in the annex to resolution 267 (III):

(f) All decisions taken by the Security Council under Chapter VI of the Charter, including:

(iv) Decisions to call upon the parties to a conflict to resort to peaceful means of conflict resolution;

(v) Decisions on mediation efforts and measures of preventive diplomacy;

(vi) Decisions calling for gathering of information or for the dispatch of observers to ascertain facts;

(g) Decisions to call upon the parties to a conflict to abide by the rules of international humanitarian law;

(h) Decisions on procedural matters related to consultations with troop-contributing countries;

(i) Decisions on the timing and modalities of submitting the report of the Security Council to the General Assembly;

(j) Recommendations of the Security Council made in accordance with Articles 4, 5, 6 and 97 of the Charter;

(k) Decisions taken under Article 40 of the Charter relating to provisional measures;

(l) Decisions adopted on the basis of implementing Article 50 of the Charter. [A/52/47, annex XI, sect. I.A, para. 6]

(21) General Assembly resolution 267 (III), with its updated annex and any agreed additional decisions deemed procedural, should be recommended to the Security Council for adoption and incorporation into its rules of procedure. [A/52/47, annex XI, sect. I.A, para. 7]

(30) The veto should be excluded in respect of matters contained in the annex to General Assembly resolution 267 (III), entitled "Decisions deemed procedural", updated as necessary. [A/52/47, annex XVI, para. 4 (b)]

(B) Permanent members of the Security Council should commit themselves not to use the veto except for matters under Chapter VII of the Charter.

The General Assembly should urge permanent members not to use the veto except for matters under Chapter VII of the Charter.

Such suggestions are contained in the following paragraphs of annex XI (A (a)):

(11) The permanent members of the Security Council, collectively or individually, should commit themselves, in a legally binding manner, not to resort to the veto or to the threat of its use beyond actions taken under Chapter VII of the Charter. [A/52/47, annex X, sect. I.A, para. 1]

(15) The permanent members of the Security Council, collectively or individually, should commit themselves, in a legally binding manner, not to resort to the veto or to the threat of its use beyond actions taken under Chapter VII of the Charter. Such commitments should be incorporated into the rules of procedure of the Security Council. [A/52/47, annex XI, sect. I.A, para. 1]

(31) To discourage the use of the veto, the General Assembly should decide to urge the original permanent members of the Security Council to limit the exercise of their veto power to actions taken under Chapter VII of the Charter. [A/52/47, annex II, para. 4 (a)]

Other suggestions

(A) Permanent members of the Security Council should make a unilateral or collective commitment not to resort to the veto.

Such suggestions are contained in the following paragraphs of annex XI (A (a)):

(5) New permanent members should commit themselves not to use the veto de facto, even if they have it de jure. [Oral proposal at the May 2000 session of the Working Group]

(10) The Security Council should explore further the possibility for unilateral declarations by the permanent members containing a commitment not to resort to the veto. [A/52/47, annex III, sect. VI.A, para. 26 (c) (ii)]

(B) If a veto is cast, there should be an explanation of the reasons for the veto.

If a veto is cast, an explanation of the reasons for the veto should be provided to the General Assembly.

Such suggestions are contained in the following paragraphs of annex XI (A (a)):

(6) The introduction of an obligation for a State to explain to the General Assembly why it is vetoing a resolution would make it more difficult to do so and thus bring about substantial progress towards using the right of veto more responsibly. [A/AC.247/2000/CRP.4]

(12) The permanent members of the Security Council should exercise the veto in a manner consistent with their responsibilities under the Charter. The permanent members should always provide a written justification whenever they exercise the veto. [A/52/47, annex X, sect. I.A, para. 2]

(16) The permanent members of the Security Council should exercise the veto in a manner consistent with their responsibilities under the Charter and in accordance with the norms of international law. The veto should be exercised only when permanent members consider the question of vital importance, taking into account the interests of the United Nations as a whole. To state upon what factual and legal ground the permanent members consider this condition to be present, they should always provide a written justification, which could be considered legally binding. [A/52/47, annex XI, sect. I.A, para. 2]

(24) In the event of any veto of a draft resolution of the Security Council, the permanent members should accompany that decision with an explanation of such action. [A/52/47, annex XIV, para. 4]

(C) Permanent members of the Security Council should exercise restraint in resorting to the veto, i.e.:

- Every endeavour should be made to arrive at consensus decisions in the Security Council so that the veto need not be used
- A veto should be exercised only when the question is of vital importance to the United Nations as a whole
- If a veto is used, a written explanation of the reason for the veto should be given and also provided to the General Assembly

Such suggestions are contained in the following paragraphs of annex XI (A (a)):

(16) The permanent members of the Security Council should exercise the veto in a manner consistent with their responsibilities under the Charter and in accordance with the norms of international law. The veto should be exercised only when permanent members consider the question of vital importance, taking into account the interests of the United Nations as a whole. To state upon what factual and legal ground the permanent members consider this condition to be present, they should always provide a written justification, which could be considered legally binding. [A/52/47, annex XI, sect. I.A, para. 2]

(26) The permanent members of the Security Council should endeavour not to resort to the veto or to the threat of its use. They should exercise the veto in a manner consistent with their responsibilities under the Charter. The General Assembly should adopt a declaration encouraging Security Council members to make every effort to seek consensus in the Council's decision-making process. [A/52/47, annex XV]

(29) The permanent members of the Security Council, mindful of the fact that they are acting on behalf of the United Nations as a whole, should exercise the veto only when they consider the question to be of vital importance, taking into account the interest of the United Nations as a whole, and should state in each case, in writing, on what ground they consider that condition to be present. [A/52/47, annex XVI, para. 4 (a)]

Suggestions of a more general nature

Such suggestions are contained in the following paragraphs of annex XI (A (a)):

(4) The proposals regarding limitation of the rights of the veto, found in the 1948 documents submitted to the Interim Committee by representatives of China (A/AC.18/13), the United Kingdom of Great Britain and Northern Ireland (A/AC.18/17) and the United States of America (A/AC.18/41), should be considered. [Oral proposal at May 2000 session of the Working Group]

(9) The Security Council should further explore the proposal for a provision enabling a permanent

member to cast a negative vote without that vote constituting a veto if the member so declares. [A/52/47, annex III, sect. VI.A, para. 26 (c) (i)]

(14) The General Assembly should adopt a declaration expressing its attitude towards the veto as a voting instrument in the Security Council, encouraging Security Council members to make every effort to seek consensus in the Council's decision-making process. The declaration should also contain recommendations to the Council aimed at curtailing, limiting or discouraging the use of the veto. [A/52/47, annex X, sect. I.A, para. 5]

(17) The Security Council should introduce a practice whereby a permanent member would be able to cast a negative vote without such a vote constituting a veto when the member so declares. This would be similar to the current practice concerning the abstention, non-participation or absence of a permanent member in the Council's decision-making process. [A/52/47, annex XI, sect. I.A, para. 3]

(22) General Assembly resolution 267 (III), with its updated annex and any agreed additional decisions deemed procedural, should be recommended to the Security Council for adoption and incorporation into its rules of procedure. [A/52/47, annex XI, sect. I.A, para. 7]

(23) The members of the Security Council shall make every effort to seek consensus in the Council's decision-making process. [A/52/47, annex XIV, para. 1]

(25) A high-level working group should consider the question of the veto and submit any agreed recommendations to the General Assembly as soon as it is able, if possible prior to the adoption of Charter amendments. [A/52/47, annex XIV, para. 5]

(27) The General Assembly, in accordance with Article 10 of the Charter, would make specific recommendations aimed at reducing areas where the veto can be applied. [A/52/47, annex XVI, para. 3 (a)]

(28) The existing permanent members would state, individually or collectively, in writing, that they would commit themselves to exclude the use of the veto as recommended by the General Assembly. [A/52/47, annex XVI, para. 3 (b)]

III. Principal elements in the suggestions

A. Suggestions intended to leave the veto in its present form

The veto in its present form should be maintained.

B. Suggestions intended to preclude or limit exercise of the veto

Suggestions relating to the scope of the veto

(a) What constitutes "procedural" matters, in terms of Article 27, paragraph 2, of the Charter, should be established by an updating of the annex to General Assembly resolution 267 (III) *and* should be applied by the Security Council.

(b) Permanent members should commit themselves not to use the veto except for matters under Chapter VII of the Charter.

(c) The General Assembly should urge permanent members not to use the veto except for matters under Chapter VII of the Charter.

Other suggestions

(a) Permanent members of the Security Council should make unilateral or collective commitments not to use the veto.

(b) Permanent members of the Security Council should exercise restraint in resorting to the veto, i.e.:

- Every endeavour should be made to arrive at consensus decisions in the Security Council so that the veto need not be used
- A veto should only be exercised when the question is of vital importance to the United Nations as a whole
- If a veto is used, a written explanation of the reason for the veto should be given and also provided to the General Assembly